CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 81.

HENRY CHOTEAU, PETITIONER,

vs.

DAVID BURNET
ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 14, 1930

CERTIORARI GRANTED MAY 19, 1930

(34,946)

(34,946)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 81

HENRY CHOTEAU, PETITIONER,

vs.

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

INDEX

	Original	Print
Proceedings in United States circuit court of appeals, tenth circuit	a	1
Caption.....(omitted in printing)..	a	
Proceedings before U. S. Board of Tax Appeals	1	1
Docket entries	1	1
Petition	2	2
Exhibit A—Letter from Blair to Chouteau, December 20, 1926	4	4
Answer	7	7
Opinion, Sternhagen, M	8	8
Judgment	10	11
Motion to make findings of fact	10	11
Order on motion to make findings of fact	11	12
Petition for review and notice	12	13
Statement of evidence	15	16
Exhibit A—Certificate of competency	16	17
Exhibit B—Deed from Cherokee Nation to United States, June 14, 1892	17	17

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 10, 1930

	Original	Print
Praecipe for transcript	21	22
Appearances of counsel (omitted in printing)	23	
Stipulation for revival of cause and substitution of Robert H. Lucas as party respondent and order on same	24	23
Argument and submission (omitted in printing)	25	
Opinion, Lewis, J.	26	26
Judgment	32	33
Motion for stay of mandate	32	34
Order staying mandate	33	35
Clerk's certificate (omitted in printing)	34	
Order allowing certiorari	35	35

[fols. a-c] [Caption omitted]

BEFORE U. S. BOARD OF TAX APPEALS

Docket No. 23792

[fol. 1] HENRY CHOTEAU, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

For Taxpayer: T. J. Leahy, Esq., Pawhuska, Okla.
For Comm'r: S. S. Faulkner, Esq.

DOCKET ENTRIES

1927.

Feb. 7. Petition received and filed. Taxpayer notified.
Feb. 9. Copy of petition served on General Counsel.
Mar. 28. Answer filed by G. C.
Apr. 6. Copy of answer served on taxpayer. Assigned general calendar.

1928

Mar. 26. Motion to advance hearing—May 15, '28 or thereafter—filed by taxpayer.
Mar. 28. Motion granted to May 15, 1928.
May 15. Hearing had before Mr. Sternhagen. Submitted. Stipulation filed. Taxpayer's brief to be filed, respondent to 6/18/28 to answer & taxpayer reply due July 9, '28. See 23272.
May 17. Transcript of hearing of May 15, 1928, filed.
May 25. Brief filed by taxpayer.
May 28. Copy of brief served on G. C.
June 18. Brief filed by G. C. See 23272.
June 30. Reply brief filed by taxpayer.

1929

Jan. 14. Opinion rendered. Mr. Sternhagen. Judgment will be entered for the respondent.
Feb. 9. Judgment redetermining deficiency entered.
Feb. 9. Motion to have Board make findings and designate them as all the facts filed by G. C.

Feb. 11. Order that motion and these findings of facts and order be filed as part of the record in this proceeding, entered.
Feb. 14. Order fixing amount of bond $716.02 entered. (1)
Feb. 14. Supersedeas bond for $716.02 approved & ordered filed.
Mar. 14. Petition for review by U. S. Cir. Ct. of Ap. (8) with assignments of error filed by taxpayer.
Mar. 14. Proof of service filed.
[fol. 2] Mar. 14. Praecipe filed.
Mar. 14. Proof of service of praecipe filed.
Mar. 14. Statement of evidence lodged.
Mar. 14. Proof of service of statement for hearing 3/30/29 filed.
Mar. 21. Statement of evidence approved & ordered filed.

Now, March 26, 1929, the foregoing Docket Entries certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

BEFORE U. S. BOARD OF TAX APPEALS

PETITION—Filed Feb. 27, 1927.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:PA:4:0-60D RO'L, dated December 20, 1926, and as a basis for this proceeding alleges as follows:

1. The petitioner is an individual and a resident of Ralston, Oklahoma.

2. The notice of deficiency, a copy of which is hereto attached and marked "Exhibit A," was mailed to the petitioner on December 20, 1926.

3. Tax in question is income tax for the year 1918, 1919 and 1920 in which there is claimed a deficiency in tax amount-int [amounting] to $358.01. The petitioner says that for the

year 1918 he paid as income tax $122.40, for 1919, $57.55, for 1920, $551.21, making a total of $731.16 which the petitioner says he is entitled to recover instead of being liable for a deficiency as claimed by the respondent.

4. The determination of tax as set forth by the respondent in said notice of deficiency is based on the following error:

(a) In his determination the respondent holds that the bonus and royalty received by the petitioner as a member of the Osage Tribe of Indians is subject to the payment of an income tax.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

[fol. 3] (a) The petitioner is a member of the Osage Tribe of Indians, duly enrolled as such under the Act of Congress of June 28, 1906. That he received during the years in question his pro rata part of the bonuses and royalties received by the Osage Tribe of Indians from oil and gas mining leases, made by said tribe with the approval of the Secretary of the Interior on oil and gas mineral resources belonging to said tribe and held in trust by the United States. The bonus and royalty was received by the United States and held in trust for the tribe until disbursed as provided by law.

6. The petitioner prays for a relief from the deficiency as claimed by the respondent on the following grounds and in each of the following particulars:

(a) That for the year of 1918 he recover $122.40 or be credited with an overassessment for the same for the reason that the same was a tax paid by him on his pro rata part received by him of the bonuses and royalties received by the Osage Tribe of Indians as hereinbefore set forth.

(b) That for the year of 1919 he recover $57.55 or be credited with an overassessment for the same for the reason that the same was a tax paid by him on his pro rata part received by him of the bonuses and royalties received by the Osage Tribe of Indians as hereinbefore set forth.

(c) That for the year of 1920 he recover $551.21 or be credited with an overassessment for the same for the reason that the same was a tax paid by him on his pro rata part received by him of the bonuses and royalties received by the Osage Tribe of Indians as hereinbefore set forth.

(d) That the deficiency claimed by the respondent be denied.

(d) That he have interest at the rate of 6% per annum on the above amounts from the dates on which the same were paid.

Wherefore the petitioner prays that this Board hear and redetermine the deficiency claimed.

Duly sworn to by Henry Chouteau. Jurat omitted in printing.

T. J. Leahy, Attorney for Petitioner, Pawhuska, Oklahoma.

[fol. 4] EXHIBIT A TO PETITION

Treasury Department, Office of Commissioner of Internal Revenue, Washington, Dec. 20, 1926.

IT:PA:4:0-60D RQ'L.

Mr. Henry Chouteau, Roll #1142, c/o Mr. T. J. Leahy, Attorney, Pawhuska, Oklahoma.

SIR: The determination of your income tax liability for the years 1918, 1919 and 1920 discloses a deficiency in tax amounting to $358.01, as set forth in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1926, you are allowed 60 days from the date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the unpaid amount of the assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, [fol. 5] you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the inclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA:4:0-60D-RO'L. In the event that you acquiesce in a part of the determination the waiver should be executed with respect to the items to which you agree.

Respectfully, D. H. Blair, Commissioner, by C. R. Nash, Assistant to the Commissioner.

Inclosures: Statement, Form A, Form 882.

Statement

IT:PA:4-0-60D. RO'L

In re Mr. Henry Chouteau, Roll # 1142, % Mr. T. J. Leahy, Attorney, Pawhuska, Oklahoma.

Year	Deficiency in tax
1918 (Waiver)	$40.64
1919 (Waiver)	68.98
1920 (Waiver)	248.39
Total	$358.01

An audit of the income tax returns as filed for the above-mentioned years indicates the following adjustments:

1918

Net income reported		$4,240.00
Bonus and royalties received	$5,910.00	
Bonus and royalties reported	3,940.00	
		1,970.00
		$6,210.00
Less: Depletion		1,292.69
Net income adjusted		$4,917.31
Less: Personal exemption and credit for dependents		2,200.00
Amount subject to normal tax at 6%		$2,717.31
[fol. 6] Amount of tax at 6%		$163.04
Tax previously assessed		122.40
Deficiency		$40.64

1919

Net income reported		$2,438.77
Bonus and royalties received	$7,470.00	
Bonus and royalties reported	3,894.64	
		3,575.36
		$6,014.13
Brought forward		$6,014.13
Less: Depletion		1,850.92
Net income adjusted		$4,163.21
Less: Personal exemption		1,000.00
Amount subject to normal tax at 4%		$3,163.21
Amount of tax at 4%		$126.53
Tax previously assessed		57.55
Deficiency		$68.98

1920		
Net income reported		$8,920.18
Depletion claimed	$5,250.00	
Depletion allowed	3,090.24	
		2,159.76
Net income adjusted		$11,079.94
Less: Personal exemption		1,000.00
Amount subject to normal tax		$10,079.94
Amount subject to tax at 4%		4,000.00
Amount subject to tax at 8%		$6,079.94
Amount of tax at 4%		$160.00
Amount of tax at 8%		486.40
Surtax on $11,079.94		153.20
Total		$799.60
Tax previously assessed		551.21
Deficiency		$248.39

[fol. 7] Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

Now, March 26, 1929, the foregoing Petition certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

BEFORE U. S. BOARD OF TAX APPEALS

ANSWER—Filed March 28, 1927

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for answer to the petition of this taxpayer, admits and denies as follows:

1. Admits the allegations contained in paragraph (1) of the petition.

2. Admits the allegations contained in paragraph (2) of the petition.

3. Admits that the deficiencies are in the amounts and for the years as alleged in paragraph (3) of the petition, but denies all other allegations contained in said paragraph.

4. Denies that the Commissioner erred in respect to the matters set forth in paragraph (4) of the petition.

5. Denies the allegations contained in paragraph (5) of the petition.

Wherefore it is prayed that the taxpayer's appeal be denied.

A. W. Gregg, General Counsel Bureau of Internal Revenue. Of Counsel: Shelby S. Faulkner, Special Attorney, Bureau of Internal Revenue.

Now, March 26, 1929, the foregoing Answer certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals. (Seal.)

[fol. 8] BEFORE U. S. BOARD OF TAX APPEALS

OPINION

Promulgated January 14, 1929

T. J. Leahy, Esq., for the petitioner.
Shelby S. Faulkner, Esq., for the respondent.

Sternhagen: This proceeding was submitted with that of Mary Blackbird, Docket No. 23272, 14 B.T.A. The Commissioner determined deficiencies of individual income tax of $40.64 for 1918, $68.98 for 1919, and $248.39 for 1920. Petitioner seeks to set aside these deficiencies and also claims overpayment of amounts already paid for such years.

The case is submitted on a stipulation of facts which is as follows:

It is hereby stipulated and agreed by and between the above-named petitioner and the above-named respondent, through their respective attorneys, that the following is a true and correct statement of the facts involved in this controversy, and that the Board of Tax Appeals may accept the same as a true, correct, and complete statement of the facts involved, in conjunction with the petition and answer filed in this case, and render judgment thereon.

(1) The petitioner, Henry Chouteau, is a member of the Osage Tribe of Indians, duly enrolled and alloted as such under the Act of Congress of June 28, 1906 (34 Stat. at L., 539) and has a certificate of competency as provided for in said Act of Congress, said certificate of competency having been issued on March 5, 1910, a copy of said certificate being attached hereto and made a part hereof, marked as Exhibit A.

(2) Henry Chouteau, the petitioner, was also during the years 1918, 1919, 1920 the owner of one-half share or allotment which he had received by inheritance from another member of the Osage Tribe of Indians, who was duly enrolled and allotted as such. The petitioner, during the years 1918, 1919 and 1920 was therefore the owner of one and one-half shares or allotments, representing his own share or allotment which he had received by way of inheritance.

(3) During the year 1918 petitioner received as income from his own share or allotment as a member of the Osage Tribe of Indians, the sum of $3,940.00 and from the inherited one-half share or allotment that was owned by him, the sum of $1,970.00. Upon the total income so received petitioner paid, as income tax, the sum of $122.40.

[fol. 9] (4) During the year 1919 petitioner received as income from his own share or allotment as a member of the Osage Tribe of Indians, the sum of $4,980.00 and from the inherited one-half share or allotment that was owned by him, the sum of $2,490.00. Upon the total income so received petitioner paid, as income tax, the sum of $57.55.

(5) During the year 1920 petitioner received as income from his own share or allotment as a member of the Osage Tribe of Indians, the sum of $9,900.00 and from the inherited one-half share or allotment that was owned by him, the sum of $4,950.00. Upon the total income so received petitioner paid, as income tax, the sum of $551.21.

(6) The amounts received by the petitioner were paid to him through the Osage Indian Agency at Pawhuska, Oklahoma.

(7) All of the said income received by the petitioner during the years 1918, 1919 and 1920 was his pro rata part of the income of the Osage Tribe of Indians which was received during the said years from oil and gas mineral leases made by said tribe with the approval of the Secretary of the Interior under said Act of Congress of June 28, 1906. The oil and gas mineral leases were upon a part of the lands originally bought for the Osage Tribe of Indians by the United States with money belonging to said tribe and held in trust for said tribe by the United States, said lands having been purchased from the Cherokee Tribe of Indians, and deeded to the United States to be held in trust by it for the said Osage Tribe of Indians. A true copy of the aforementioned deed, marked Exhibit "B", is attached hereto and made a part hereof.

(8) The lands aforesaid were purchased from the Cherokee Tribe of Indians with funds theretofore realized from the sale of lands of the Osage Indians located in the State of Kansas.

(9) The parties agree that the Board may take judicial notice of all pertinent statutes and treaties.

(10) The computations as to amounts, and the depletion allowed as shown by the deficiency letter are correct.

Following Mary Blackbird, 14 B.T.A., and Leah Brunt, etc., 5 B.T.A. 134.

Judgment will be entered for the respondent.

[fol. 10] Now, March 26, 1929, the foregoing Opinion certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

BEFORE U. S. BOARD OF TAX APPEALS

JUDGMENT—Feb. 9, 1929

Pursuant to the Board's report of January 14, 1929, it is

Ordered, Adjudged and Decided that there are deficiencies in income tax of $40.64, $68.98 and $248.39 for 1918, 1919 and 1920, respectively.

Enter.

(Signed) John M. Sternhagen, Member United States Board of Tax Appeals.

A true copy. Teste:

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

Now, March 26, 1929, the foregoing Judgment certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

BEFORE U. S. BOARD OF TAX APPEALS

MOTION TO MAKE FINDINGS OF FACT—Filed Feb. 9, 1929

Comes now the Commissioner of Internal Revenue, respondent in the above-entitled cause, by and through his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and moves that the Board make findings and designate them as such of all of the facts set forth in the stipulation filed with the Board, leaving out the details of petitioner's Exhibits A and B appended to said stipulation and merely making a reference to those exhibits.

In support of this motion, it is shown to the Board that the petitioner in the above-entitled cause is filing or is about to file a petition with the Board to have its decision reviewed by the United States Circuit Court of Appeals [fol. 11] for the Eighth Circuit. Since the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of the Kendrick Coal and Dock Company v. the Commissioner of Internal Revenue, decided November 7, 1928,

there is some doubt as to whether or not the Board may render an opinion without findings of fact as it did in this case. The above-entitled cause is a test case and a decision by an appellate court upon the merits will dispose of numerous cases now pending before the Board and awaiting a final decision in this case. If the Circuit Court of Appeals should remand this case to the Board to make findings of fact, such procedure will only delay a final determination of the question involved.

Wherefore, it is prayed that the motion of the respondent be granted.

C. M. Charest, General Counsel, Bureau of Internal Revenue.

BDM.

No objection. T. J. Leahy, Attorney for petitioner.

Now, March 26, 1929, the foregoing Motion certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

BEFORE U. S. BOARD OF TAX APPEALS

ORDER ON MOTION TO MAKE FINDINGS IN FACT—Feb. 11, 1929

Subsequently to the promulgation of the opinion in this proceeding, counsel for the parties under date of February 9, 1929, filed a motion that the stipulated facts set forth in the Board's opinion be expressly found as facts and that the findings so made should be expressly designated. For the reasons set forth in such motion the Board makes the following findings of fact in accordance with the stipulation of the parties set forth in the opinion aforesaid:

(Findings of fact omitted, being identical with paragraphs numbered (1) to (10) of the stipulated facts set forth in the opinion herein, except as to paragraph (9), which in the order reads as follows:

[fol. 12] (9) "(This paragraph of the stiplation is omitted from the findings because it is obviously not a stipulated fact)."

Ordered that the aforesaid motion and these findings of fact and order be filed as part of the record in this proceeding.

(Signed) John M. Sternhagen, Member United States Board of Tax Appeals.

A true copy. Teste:

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

Now, March 26, 1929, the foregoing Order certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

UNITED STATES CIRCUIT COURT OF APPEALS

PETITION FOR THE REVIEW OF THE DECISION OF THE UNITED STATES BOARD OF TAX APPALS—Filed March 14, 1929

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Henry Chouteau in support of this, his petition, filed in pursuance with the provisions of Section 1001 of the Act of Congress approved February 26, 1926, entitled the Revenue Act of 1926, for the review of the decision of the United States Board of Tax Appeals rendered on the 14th day of January, 1929, approving a deficiency in income and profits taxes of the petitioner for the years 1918, 1919 and 1920 in the amount of $358.01 as shown by the final notice of deficiency previously mailed by the respondent under date of December 20, 1926. The said petition alleges in substance as follows:

1. That the petitioner is an individual and a resident of Ralston, Oklahoma. That the notice of deficiency was mailed to the petitioner on December 20, 1926. That the tax in question is income tax for the years 1918, 1919 and 1920, in which there was claimed a deficiency in tax amounting to $358.01. That this petitioner for the year 1918 paid as income tax $122.40; for 1919, $57.55; for 1920, $551.21,

making a total of $731.16 which the petitioner says he was [fol. 13] not liable for and is entitled to have the same refunded to him by the respondent and that the tax in question which is claimed by the petitioner he is not liable for because it is sought to be collected from him contrary to law and is not authorized by law.

2. The petitioner says he is a duly allotted and enrolled member of the Osage Tribe of Indians under and by virtue of the Act of Congress of June 28, 1926, (34 Stat., at L. 539). That the tax sought to be assessed against him by the respondent was a tax on his part of the income of the Osage Tribe of Indians for the years 1918, 1919 and 1920. That siad [said] income came to him as a member of said tribe by reason of the mineral resources belonging to said tribe and which were held in trust by the United States for the use and benefit of said tribe and which money was held in trust for him by the United States until disbursed to him as provided by law. That after this petitioner filed his petition with the United States Board of Tax Appeals as above stated, the respondent filed with said Board his answer to said petition in which he admitted that this petitioner is a member of the Osage Tribe of Indians in Oklahoma and was duly allotted as such and that his income for the years 1920 and 1921 came from the source as claimed by the petitioner. And further alleged that said income was subject to be taxed under the income tax laws of the United States and that therefore, the deficiency tax assessed against the petitioner is proper and valid.

3. This cause being at issue under the rules and practice of said United States Board of Tax Appeals, the same came duly on for hearing on the 15th day of May, 1928, upon the petition and answer and the agreed statement of facts duly signed and entered into between this petitioner and the respondent. That on the 14th day of January, 1929, the United States Board of Tax Appeals rendered its final order approving the deficiency as determined by the respondent and gave judgment in favor of the respondent and against the petitioner.

4. The petitioner being aggrieved by the said findings of the said Board and being a citizen and a resident of the

State of Oklahoma, desires a review thereof as provided by law by the United States Circuit Court of Appeals for the Eighth Circuit within which circuit is located the office of the Collector of Internal Revenue to whom the said petitioner made his income and profits tax return.

[fol. 14] 5. The petitioner as a basis for review makes the following assignments of error:

(a) The Board of Tax Appeals erred in holding that his income of the petitioner derived by him from the Osage Tribe of Indians as a member of said tribe and from the income of said tribe which was held in trust by the United States of America for said tribe, was upon distribution to him subject to the payment of an income tax.

(b) The Board of Tax Appeals erred in rendering judgment for the respondent.

Wherefore, your petitioner prays that this Honorable Court may review said findings, decision, opinion and order and reverse and set aside the same and that the clerk of the said United States Board of Tax Appeals be directed to transmit and deliver to the clerk of said court certified copies of all and every of the documents necessary and material to the presentation and consideration of the foregoing petition for review and as required by the rules of said court and statute made and provided.

And your petitioner will ever pray.

T. J. Leahy, Attorney for Petitioner.

Duly sworn to by T. J. Leahy. Jurat omitted in printing.

[fol. 15] To C M Charest, General Counsel, Bureau of Internal Revenue, Washington, D. C., attorney for the Respondent.

Sir: You Will Please Take Notice that on the 14th day of March, 1929, the undersigned will present to the United States Board of Tax Appeals and file with the clerk thereof, the petition of Henry Chouteau, a copy of which is annexed hereto for the review by the United States Circuit Court of Appeals for the Eighth Circuit, of the final order and decision of the said Board in the above entitled proceeding en-

tered upon the records of the said Board on the 14 day of January, 1929.

Dated Washington, D. C. March 14th 1929.

T. J. Leahy, Attorney for Henry Chouteau.

Copy of within notice and copy of Petition for Review is hereby accepted this 14th day of March, 1929.

(S.) C. M. Charest, General Counsel, Bureau of Internal Revenue.

Now, March 26, 1929, the foregoing Petition for Review with proof of service thereon certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Boards of Tax Appeals.

(Seal.)

Before U. S. Board of Tax Appeals

Statement of the Evidence—Filed Mar. 21, 1929

The above entitled cause came on for hearing before the Honorable John M. Sternhagen, Member of the United States Board of Tax Appeals on the 15 day of May, 1928, there being present the petitioner, by her counsel T. J. Leahy, and the respondent by his counsel, Shelby S. Faulkner. Thereupon this cause was submitted to the United States Board of Tax Appeals upon the petition of the petitioner and the answer of the respondent and the following agreed statement of facts:

(Stipulation omitted, same being set forth in full in the opinion printed herewith.)

[fol. 16] There being no other or further evidence submitted in the trial of this cause.

T. J. Leahy, Attorney for Petitioner.

The foregoing contains all the evidence given at the hearing of this proceeding and this statement of the evidence is duly stated, approved and signed and ordered to

be made of record in the above-entitled cause this 21st day of March, 1929.

(S.) J. M. Sternhagen, Member United States Board of Tax Appeals.

Mar. 20, 1929.

Approved:

C. M. Charest, General Counsel, Bureau of Internal Revenue.

EXHIBIT A

Allotment No. 1071

Whereas, Henry Chouteau, a member of the Osage Tribe of Indians, has made application for the issuance of a Certificate of Competency under the provisions of paragraph 7 of Section 2 of the Act of Congress approved June 28, 1906 (34 Stat. L., 539-542); and,

Whereas, upon investigation, consideration and examination of the request, Henry Chouteau has been found to be fully competent and capable of transacting his own business and caring for his own individual affairs.

Now, Therefore, the First Assistant Secretary of the Interior, by virtue of the power and authority vested in him by paragraph 7 of Section 2 of said Act of Congress of June 28, 1906, does hereby issue to said Henry Chouteau, this Certificate of Competency, and does hereby invest him with full power and authority to sell and convey any or all surplus lands deeded him under the provisions of said Act of Congress, except the minerals therein, which are reserved for the use of the Osage Tribe for a period of twenty-five years from April 8, 1906, and does hereby declare him to be fully competent and capable of managing and caring for his individual affairs.

Done at the City of Washington this Mar. 5, 1910.

Frank Pierce, First Assistant Secretary of the Interior.

[fol. 17]

EXHIBIT B

This Indenture made and entered into this fourteenth day of June A. D. eighteen hundred and eighty three, be-

tween said Cherokee Nation and the United States, the said cipal Chief, Richard M. Wolfe and Robert B. Ross, delegates of said Cherokee Nation, for and in behalf of said Nation, of the first part, and the United States of America, in trust for the use and benefit of the Osage and Kansas Indians, of the second part, Witnesseth: That,

Whereas by the sixteenth Article of the treaty concluded July nineteenth, A. D. eighteen hundred and sixty six, between said Cherokee Nation and the United States, the said United States acquired the right "to settle friendly Indians on any part of the Cherokee country west of the ninety-six degree" of west longitude, under certain limitations therein mentioned, and

Whereas under authority of an Act of Congress approved June fifth, A. D. eighteen hundred and seventy two, a certain tract of said country was set apart for the Great and Little Osage tribe of Indians, with a proviso that said Great and Little Osage tribe shall permit the settlement within the limits of said tract of the Kansas tribes of Indians; and

Whereas by virtue of a provision in the Act of Congress of March third, eighteen hundred and seventy three, there has been transferred from the proceeds of sale of Osage lands in Kansas, and placed to the credit of said Cherokee Nation the sum of one million, ninety nine thousand, one hundred and thirty seven and forty one hundredths dollars ($1,099,137.41) in payment for said tract of land; and

Whereas, by an Act of Congress, approved March third, A. D. eighteen hundred and eighty three, three hundred thousand dollars ($300,000) was appropriated "to be paid into the treasury of the Cherokee Nation out of funds due under appraisement for Cherokee lands west of the Arkansas River" provided "That the Cherokee Nation through its proper authorities shall execute conveyances satisfactory to the Secretary of the Interior, to the United States in trust only for the benefit of the Pawnees, Poncas, Nez-Perces, Otoes and Missourias and Osages now occupying said tract as they respectively occupy the same, before the payment of said sum of money;" now,

Therefore by authority of an act of the National Council of the Cherokee Nation aforesaid, approved May eighth, eighteen hundred and eighty three, which recites "That

[fol. 18] Dennis W. Bushyhead, Principal Chief, Richard M. Wolfe and Robert B. Ross, delegates of the Cherokee Nation, are hereby authorized and empowered, in the name of the Cherokee Nation, to execute deeds of conveyance as required by said Act, March third, eighteen hundred and eighty three, for the tracts of Cherokee land for the benefit of the Pawnees, Poncas, Nez-Perces, Otoes and Missourias and Osages, as they respectively occupy the same," said party of the first part, by the aforesaid principal chief and delegates, and in consideration of the payment of the sum of money mentioned in the Act of March third, eighteen hundred and eighty three, aforesaid, as due under appraisement for Cherokee lands west of the Arkansas River, and of the further sum paid under the Act of March third, eighteen hundred and seventy three, as aforesaid, does by these presents bargain, sell, remise, release, relinquish, and confirm unto the said party of the second part, forever, in trust nevertheless and for the use and benefit of the said Osage and Kansas Indians, all those certain tracts of land lying and being in the Indian Territory, embracing the following townships and fractional townships, north, and east of the Indian Meridian—the fractional townships being on the left bank of the Arkansas River; Fractional townships twenty four (24) twenty five (25) and twenty six (26), Range two (2) East;

Fractional townships twenty three (23), twenty four (24), twenty five (25), twenty six (26), twenty seven (27), twenty eight (28) and twenty nine (29), range three (3) east;

Fractional townships twenty three (23), twenty four (24), twenty five (25), twenty six (26), and twenty seven (27), township twenty eight (28), and fractional township twenty nine (29), range four (4) east;

Fractional townships twenty three (23) and twenty four (24) townships twenty five (25) twenty six (26) twenty seven (27), twenty eight (28), and fractional township twenty nine (29) range five (5) east;

Fractional townships twenty two (22), and twenty three (23), townships twenty four (24), twenty five (25), twenty six (26) twenty seven (27), twenty eight (28) and fractional township twenty nine (29), range six (6) east;

Fractional townships twenty one (21) and twenty two (22), townships twenty three (23), twenty four (24), twenty five (25), twenty six (26), twenty seven (27), twenty eight (28) and fractional township twenty nine (29), range seven (7) east;

[fol. 19] Fractional townships twenty one (21) and twenty two (22), townships twenty three (23), twenty four (24), twenty five (25), twenty six (26), twenty seven (27), twenty eight (28), and fractional township twenty nine (29), range eight (8) east;

Fractional townships twenty (20) and twenty one (21), townships twenty two (22) twenty three (23) twenty four (24) twenty five (25) twenty six (26) twenty seven (27) twenty eight (28) and fractional township twenty nine (29) range nine (9) east; Fractional township twenty (20), townships twenty one (21) twenty two (22), twenty three (23), twenty four (24), twenty five (25), twenty six (26), twenty seven (27), twenty eight (28), and fractional township twenty nine (29), range (10) east; Fractional township twenty (20), township twenty one (21), twenty two (22), twenty three (23), twenty four (24), twenty five (25), twenty six (26), twenty seven (27), twenty eight (28) and fractional township twenty nine (29), range Eleven (11) east Fractional townships twenty (20), twenty one (21), twenty two (22), twenty three (23), twenty four (24), twenty five (25), twenty six (26), twenty seven (27), twenty eight (28) and twenty nine (29), range Twelve (12) east according to a plat of lands annexed hereto, marked "A," and made a part of this conveyance containing in all one million five hundred and seventy thousand, one hundred and ninety six and thirty hundredths acres (1,570,196.30) hereby granted. Under the act aforesaid, there has been set apart for the Kansas Indians, as provided by said act, the following numbered townships and fractional townships, being a part of the lands above described, and indicated upon the beforementioned plat;

Fractional township twenty seven (27), twenty eight (28), and twenty nine (29), range three (3) east;

Fractional township twenty seven (27), township twenty-eight (28) and fractional township twenty-nine (29), range four (4) east; The west half of sections three (3), ten (10),

fifteen (15), twenty two (22), twenty seven (27) and thirty two (32), and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty one (21), twenty eight (28), twenty nine (29), thirty (30) and thirty one (31), of township twenty seven (27) north, range five (5) east;

The west half of sections three (3), ten (10), fifteen (15), twenty two (22), twenty seven (27), and thirty four (34), [fol. 20] and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty one (21), twenty eight (28), twenty nine (29), thirty (30), thirty one (31), thirty two (32) and thirty three (33), of township twenty eight (28) north, range five (5) east;

The west half of sections three (3), ten (10), fifteen (15), twenty two (22), twenty seven (27), and thirty four (34), and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty one (21), twenty eight (28), twenty nine (29), thirty (30), thirty one (31), thirty two (32) and thirty three (33), of township twenty eight (28), north, range five (5) east;

The west half of sections fifteen (15), twenty two (22), twenty seven (27) and thirty four (34), and sections sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty one (21), twenty eight (28), twenty nine (29), thirty (30), thirty one (31), thirty two (32), thirty three (33), of township twenty nine (29) north, range (5) east; containing an area of one hundred thousand, one hundred and thirty seven and thirty two hundredths acres (100,137.32), which aforesaid lands were paid for by the Osages to the Cherokees, and the Kansas Indians have paid for that portion assigned to them by proper transfer of the funds arising from the sale of their lands in Kansas; together with all and singular the hereditaments and appurtenances belonging, or in any wise appertaining to the lands hereby granted; To Have and to Hold and the said premises, as above described, with the appurtenances, unto the said party of the second part, for the use and purposes aforesaid;

In Witness Whereof the party of the first part hath subscribed this conveyance by the said principal chief and delegates, aforesaid, who have also hereunto set their hands and seals this fourteenth day of June A. D. eighteen hundred and eighty three.

The Cherokee Nation, by Dennis W. Bushyhead, Principal Chief. (L. S.) Richard M. Wolfe, Robert B. Ross, Delegates of the said Cherokee Nation.

Signed, sealed and delivered in the presence of Jos. K. McCamman, N. P. Loveridge, Wm. A. Phillips. (Cherokee Seal.)

[fol. 21] District of Columbia,

County [City] of Washington, ss:

On this fourteenth day of June, A. D. eighteen hundred and eighty-three, before me a Notary Public in and for the District aforesaid personally came Dennis W. Bushyhead, Richard M. Wolfe and Robert B. Ross, to me known to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed for the purpose and under the authority therein mentioned.

Geo. M. Lockwood, Notary Public. (Seal.)

Now, March 26, 1929, the foregoing Statement of Evidence certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals. (Seal.)

Before U. S. Board of Tax Appeals

Præcipe for the Record—Filed Mar. 14, 1929

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and within sixty days from date of filing of the petition for review in the above stated cause, transmit to the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, certified copies of the following document:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the case above entitled.

2. Pleadings before the Board, and all exhibits thereto attached.

3. Findings of fact, opinion and decision of the Board.

4. Petition for review.

5. Stipulation of the facts and evidence agreed upon.

The foregoing to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Eighth Circuit.

T. J. Leahy, Attorney for Henry Chouteau.

February —, 1929.

[fol. 22] Mar. 20, 1929.—Consent is noted hereon—no counter præcipe to be filed.

C. M. Charest.

Now, March 26, 1929, the foregoing Præcipe certified from the record as a true copy.

B. D. Gamble, Clerk U. S. Board of Tax Appeals.
(Seal.)

[fol. 23] Appearances of counsel omitted in printing.

[fol. 24] In United States Circuit Court of Appeals

Stipulation for Revival of Cause and Substitution—Filed Sept. 5, 1929

It is hereby stipulated and agreed by and between T. J. Leahy, Attorney for Henry Chouteau, Petitioner, and P. C. Alexander, Attorney for Commissioner of Internal Revenue, Respondent, as follows:

That since the filing of this case in this Court David H. Blair, who was at that time Commissioner of Internal Revenue, and who was the respondent at that time in the above

entitled case, and had been since it was originally filed in the United States Board of Tax Appeals at Washington, D. C., has resigned as said Commissioner of Internal Revenue, and his resignation has been duly accepted;

That David H. Blair ceased to be Commissioner of Internal Revenue on the 31st day of May, 1929;

That Robert H. Lucas was duly appointed as Commissioner of Internal Revenue to succeed the said David H. Blair, and has duly qualified as said Commissioner of Internal Revenue;

That on June 1, 1929, said Robert H. Lucas became Commissioner of Internal Revenue, and ever since that time has been and now is, Commissioner of Internal Revenue.

It is further stipulated and agreed between the parties hereto that agreeably to the Court, and in accordance with the law, this cause may be revived so that this action will be pending as against the said Robert H. Lucas as Commissioner of Internal Revenue, and that said Robert H. Lucas, as Commissioner of Internal Revenue, may be substituted as the respondent in this case for the said David H. Blair, formerly Commissioner of Internal Revenue;

That there is a substantial need for so continuing and maintaining this cause and obtaining an adjudication by this Court of the questions involved therein, because if it is not so continued and maintained the order of the United States Board of Tax Appeals, for the review of which the [fol. 25] petition for review in this cause was filed, will become final; the tax found by the said Board of Tax Appeals to be due will be assessed and collected from this Petitioner without recourse to further contest its legality, or obtain a refund thereof.

It is further stipulated and agreed that the serving of notice on the said Robert H. Lucas, as Commissioner of Internal Revenue, of the motion of petitioner to revive this action in his name, and to have his name substituted as respondent in this case, is hereby waived, and the said P. C. Alexander, who is attorney for the said Robert H. Lucas, hereby consents that an order may be made forthwith by the Court reviving this cause in the name of Robert H. Lucas, as Commissioner of Internal Revenue, and substituting him as respondent in this case for the former Com-

missioner of Internal Revenue, David H. Blair; and that this cause shall, agreeably to the Court, stand for argument before the Court as at present assigned.

T. J. Leahy, Attorney for Petitioner. P. C. Alexander, Attorney for Respondent.

(File endorsement omitted.)

Order

Twenty-third Day, June Term, Friday, September 6th, A. D. 1929. Before Honorable Robert E. Lewis, Honorable John H. Cotteral and Honorable George T. McDermott, Circuit Judges.

This cause comes on to be heard on a suggestion of substitution of party respondent herein, T. J. Leahy, Esquire, appearing for petitioner and Ralph T. O'Neil, Esquire, appearing for respondent.

Thereupon, on consideration thereof and pursuant to written stipulation herein filed, it is now here ordered by the court that Robert H. Lucas, Commissioner of Internal Revenue be and he hereby is substituted in this cause for and in the place and stead of David H. Blair, Commissioner of Internal Revenue, as the respondent herein.

Minute entry of argument and submission September 6, 1929, omitted in printing.

[fol. 26] IN UNITED STATES CIRCUIT COURT OF APPEALS,
TENTH CIRCUIT,

February Term, 1930

No. 12

HENRY CHOUTEAU, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

On Petition to Review the Decision of the United States Board of Tax Appeals

No. 13

MARY BLACKBIRD, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

On petition to Review the Decision of the United States Board of Tax Appeals

No. 14

MRS. AMARILLIS D. PETTIT, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

On Petition to Review the Decision of the United States Board of Tax Appeals

OPINION—February 5, 1930

Mr. T. J. Leahy (Mr. C. S. MacDonald, Mr. J. H. Maxey, Mr. F. W. Files, and, in No. 13, Mr. J. M. Humphreys, Osage Indian Tribal Attorney, were with him on the briefs) for petitioners.

Mr. Preston C. Alexander (Mr. Sewall Key and Mr. Morton P. Fisher, Special Assistants to the Attorney General, Mr. C. M. Charest, General Counsel, Bureau of Internal

Revenue, and Mr. Shelby S. Faulkner, Special Attorney, Bureau of Internal Revenue, were with him on the brief) for respondent.

Before Lewis, Cotteral, and McDermott, Circuit Judges

Lewis, Circuit Judge, delivered the opinion of the Court.

These are Federal Income Tax Cases. The Board of Tax Appeals affirmed a deficiency order made by the Commissioner against each of the petitioners. The cases were argued and submitted together, but are different in their facts.

1. Mary Blackbird is a restricted full-blood member of the Osage Tribe of Indians. As such member she received her allotments under the Osage Allotment Act of June 28, [fol. 27] 1906 (34 Stat. 539), and she inherited a third interest in the allotment of another member. The claimed deficiencies against her are for the years 1920 and 1921. All the lands that were allotted under the Act were purchased by the United States from the Cherokee Nation in 1883 with funds that belonged to the Osage Tribe, and the title thereto taken in the name of the United States in trust for the use and benefit of the Osages. Each member of the tribe, appearing on the roll provided for in the Act, made three selections of 160 acres each, one of which was designated as a homestead; and the remainder of the lands was then equally divided between them. Section 2 of the Act made the homestead allotment inalienable and non-taxable for a period of 25 years, and the remainder of the lands so divided inalienable for 25 years, unless the allottee procured from the Secretary of the Interior a certificate of competency which would authorize him to sell and convey all of his allotted lands except his homestead. The certificate of competency would also immediately render the lands (except the homestead) subject to taxation and in any event they were taxable on the expiration of three years from the approval of the Act. Mary Blackbird has never had a certificate of competency. The oil, gas, coal and other minerals covered by the allotted lands were reserved by the Act to the use of the tribe for a period of 25 years,—now extended to April 8, 1958, by the Act of March 2, 1929

(45 Stat. 1478),—thus segregating the mineral deposits from all of the allotted lands for a term of years. The mineral deposits, particularly of oil and gas, under much of the land has proved to be of great value. The Allotment Act authorized the tribe, through its tribal counsel, and with the approval of the Secretary of the Interior, to grant leases for extraction of these minerals and provided that the royalties received therefrom should be placed in the treasury of the United States to the credit of the members of the tribe and distributed to the individual members according to the tribal roll provided for in the Act, in the manner and at the same time that payments were made of interest on other moneys held in trust for the Osages by the United States, each member receiving his prorata share. There were other funds held then and now by the United States that belonged to the tribe, and they also were to be placed to the credit of the members on a basis of a prorata division among them, as shown by the tribal roll. By the Act all property interests of intestate deceased members descend to his or her legal representatives according to the laws of Oklahoma. The principal part of Mary Blackbird's gross income for the two years was her share of bonuses and royalties on tribal mineral leases. However, she re-[fol. 28] ceived $480 each year as surface rental from the homestead allotted to her, $100 each year as interest on funds held in trust for her by the United States, and a few additional dollars from miscellaneous sources. She and the other petitioners contend that they are not only not liable for the amounts named under the deficiency orders but that they are not subject to the income tax statute. As to Mary Blackbird, we are disposed to yield our assent to the soundness of the contention. She is a restricted full-blood Osage. Her property is under the supervising control of the United States. She is its ward, and we cannot agree that because the income statute, Act of 1918 (40 Stat. 1057), and Act of 1921 (42 Stat. 227), subjects "the net income of every individual" to the tax, this is alone sufficient to make the Acts applicable to her. Such holding would be contrary to the almost unbroken policy of Congress in dealing with its Indian wards and their affairs. Whenever they and their interests have been the subject affected by legislation they have been named and their interests specifically dealt with. Elk v. Wilkins, 112 U. S. 94, 100: "General acts of Congress

did not apply to Indians, unless so expressed as to clearly manifest an intention to include them." In Choate v. Trapp, 224 U. S. 665, the court, after noting the general rule that exemptions from taxation are to be strictly construed, said at page 675:

"But in the Government's dealings with the Indians the rule is exactly the contrary. The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without exception, for more than a hundred years and has been applied in tax cases."

Cases are cited. This is the view taken of the matter by the Attorney General in several opinions. 34 Op. Atty. Gen'l: 439; 35 Op. Atty. Gen'l. 1,107. In the first opinion cited the Attorney General among other things said:

"This practice of safeguarding the Indian has been continuously adhered to. Treaties have been considered, not according to their technical meaning, but in the sense in which they would be naturally understood by the Indians. Choctaw Nation v. United States, 119 U. S. 1; United States v. Choctaw Nation, 179 U. S. 494; Seufert Bros. v. United States, 249 U. S. 194; Starr v. Long Jim, [fol. 29] 227 U. S. 613; United States v. Payne, 264 U. S. 446. This same rule of liberal construction has also been followed in the interpretation of statutes relative to the Indians. Cherokee Intermarriage Cases, 203 U. S. 76; United States v. Celestine, 215 U. S. 278; Choate v. Trapp, 224 U. S. 665. It is well established that general Acts of Congress do not apply to Indians, unless so worded as clearly to manifest an intention to include Indians in their operation. Elk v. Wilkins, 112 U. S. 94. The Indian has always been the object of special legislation. Never has it been the practice to legislate for him generally along with the rest of the people."

In the second opinion cited the Attorney General said this:

"The principle was emphasized that general Acts of Congress do not apply to Indians unless so worded as to mani-

fest a clear intention to include them; that Indians have always been the object of special legislation, and that general legislation, and especially revenue laws, which burden and restrict the use and enjoyment of property, should not be applied to Indians, unless Congress in clear and unambiguous language so directs. * * * Such a wide departure from the prior legislative policy should not be assumed from doubtful implication, but should be recognized as existing only upon the enactment of legislation expressly so providing."

A familiar instance of the restraint of general words and sweeping expressions in an Act is the case of Church of the Holy Trinity v. United States, 143 U. S. 457; and in United States v. Kirby, 7 Wall, 482, we find this:

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

The mineral reserves under the lands are held in trust by the United States for the tribe and its members, and are being developed under its control and direction as an instrumentality for the best interests and advancement of the members of the tribe who are still recognized as dependents on Governmental care; and it seems unreasonable to hold that a general tax statute should be applied to them when they are not named nor intention in some way ex-ressed that it applies to them. Counsel for petitioner rely on The Cherokee Tobacco Case, 11 Wall. 616; but the opinion in [fol. 30] that case, as a precedent, seems to have been nullified by what is said in United States v. Forty-three Gallons of Whiskey, 108 U. S. 491. The case of Mary Blackbird is therefore reversed.

2. Mrs. Petitt is a white woman without Indian blood. She is not a member of the Osage Tribe of Indians. She inherited from her children, who were members of the Tribe, lands that had been allotted to them under the Act of June 28, 1906. All of her gross income here involved

was her pro-rata part of the income of the tribe from oil and gas leases made by said tribe with the approval of the Secretary under said Act. Her claimed deficiencies were for the years 1919, 1920, 1921 and 1922. She also claims that she is not subject to the income tax statute. Her children were without certificates of competency from the Secretary of the Interior, but we think it clear under the ruling in Levindale Lead & Zinc Co. v. Coleman, 241 U. S. 432, that their mother took their lands without any restrictions on its disposition. The United States has no control over her interests and she is in no sense its ward. She receives her share of the royalties and bonuses on the mineral deposits in accordance with the terms of the Acts, but it is not held and paid to her on the part of the Government for her protection as its dependent ward. See also Mixon v. Littleton, 265 Fed. 603. As to her the ruling of the Board of Tax Appeals is affirmed.

3. Henry Chouteau is a member of the Osage Tribe, but his quantum of Indian blood is not stated in the record. Tribal lands were allotted to him under the Osage Allotment Act and his gross income for the years in question, 1918, 1919 and 1920, was his pro-rata share from tribal mineral leases given with the approval of the Secretary under the Act of June 28, 1906. In addition to his own allotments he was the owner by inheritance of land allotted to another member of the tribe. He applied for and received from the Secretary of the Interior a certificate of competency bearing date March 5, 1910, which is provided for by the Act of June 28, 1906, paragraph 7 of section 2 of said Act reading thus:

"That the Secretary of the Interior, in his discretion at the request and upon the petition of any adult member of the tribe, may issue to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded to him by reason of this Act, except his homestead, which shall remain inalienable and non-taxable for a period of twenty-five years, or during the life of the homestead allottee, if upon investigation, consideration, and examination of the request he shall find any such member fully com- [fol. 31] petent and capable of transacting his or her own business and caring for his or her own individual affairs;

Provided, That upon the issuance of such certificate of competency the lands of such member (except his of her homestead) shall become subject to taxation, and such member, except as herein provided, shall have the right to manage, control, and dispose of his or her lands the same as any citizen of the United States. * * *."

The certificate of competency issued to Henry Chouteau reads thus:

"Whereas, Henry Chouteau, a member of the Osage Tribe of Indians, has made application for the issuance of a Certificate of Competency under the provisions of paragraph 7 of Section 2 of the Act of Congress approved June 28, 1906 (34 Stat. L. 539-542); and,

"Whereas, upon investigation, consideration and examination of the request, Henry Chouteau has been found to be fully competent and capable of transacting his own business and caring for his own individual affairs.

"Now, therefore, the First Assistant Secretary of the Interior, by virtue of the power and authority vested in him by paragraph 7 of Section 2 of said Act of Congress of June 28, 1906, does hereby issue to said Henry Chouteau, this Certificate of Competency, and does hereby invest him with full power and authority to sell and convey any or all surplus lands deeded him under the provisions of said Act of Congress, except the minerals therein, which are reserved for the use of the Osage Tribe for a period of twenty-five years from April 8, 1906, and does hereby declare him to be fully competent and capable of managing and caring for his individual affairs.

"Done at the City of Washington this Mar. 5, 1910.

"Frank Pierce, First Assistant Secretary of the Interior."

The Act of April 18, 1912 (37 Stat. 86) also deals with certificates of competency. Section 7 in part reads:

"That the lands allotted to members of the Osage Tribe shall not in any manner whatsoever be encumbered, taken or sold to secure or satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency, or removal of restrictions on alienation; nor shall the lands or funds of Osage tribal members be sub-

ject to any claim against the same arising prior to grant of a certificate of competency."

[fol. 32] Apparently the purpose of the statute in authorizing the certificate and its subsequent issuance was to fully emancipate the Indian receiving it from further Governmental control and supervision of his property, except his homestead. Chouteau's gross income for the three years was wholly his pro-rata share of royalties and bonuses on the mineral produced for those years. His certificate of competency bestowed upon him unrestricted management of his affairs and gave him full power to use and dispose of his property according to his own judgment. Thereafter his pro-rata share in the mineral production was paid to him not as a ward of the Government. It was paid to him under the terms of the Act, but was not a Governmental instrumentality and means to gradually bring him to a state of competency and independence. By provision of the Act it was determined that he was competent to have exclusive management of his own affairs when the certificate was issued to him. He obtained it at his request and with the Government's consent and approval, and thereupon he assumed the same burdens that the law imposes on every other individual property owner. We think his civil status thus fixed brought him within the terms of the income tax statutes. As to him the ruling of the Board of Tax Appeals is therefore affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

JUDGMENT—February 10, 1930

Before Honorable Robert E. Lewis, Honorable John H. Cotteral, and Honorable Orie L. Phillips, Circuit Judges

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals for a review of the decision of said Board and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the decision of the said United

States Board of Tax Appeals, in this cause, be and the same is hereby affirmed; and that Commissioner of Internal Revenue, respondent have and recover against Henry Chouteau, petitioner, his costs herein and have execution therefor.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE—Filed Mar. 10, 1930.

Come now the petitioner, Henry Chouteau, and shows to the court that he intends to and is now preparing a petition or application on review for a writ of certiorari to the Su- [fol. 33] preme Court of the United States to review the decision and judgment of this court filed herein on February 5th, 1930, and that under rule 29 of this court a mandate or other proper process in the nature of a procedendo shall be issued under the hand of the Clerk and the seal of the Court to the Court below on the expiration of thirty-five (35) days after the final disposition of the cause unless an order is made staying mandate.

That your petitioner is in good faith preparing and intending to file his petition or application for a review in the Supreme Court of the United States on petition for certiorari as above stated and desires that an order be entered staying the mandate for thirty (30) additional days.

Wherefore, your petitioner prays that an order be entered by this Honorable Court staying the mandate herein for thirty (30) days from and after the time it would ordinarily be issued under rule 29 as aforesaid or staying it for such time as this Honorable court might think proper in the premises.

T. J. Leahy, J. H. Maxey, C. S. MacDonald, of Tulsa, Oklahoma, Attorneys for Henry Chouteau, Petitioner.

Duly sworn to by J. H. Maxey. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATE—March 18, 1930

[fol. 34] Before Honorable Robert E. Lewis, Honorable Orie L. Phillips, and Honorable George T. McDermott, Circuit Judges.

This cause came on to be heard on the motion of petitioner for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the Clerk of this court a certificate of the Clerk of the Supreme Court of the United States that a petition for a writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 35] IN SUPREME COURT OF UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 19, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,946. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 81. Henry Choteau, petitioner, vs. Robert H. Lucas, Commissioner of Internal Revenue. Petition for writ of certiorari and exhibit thereto. Filed April 14, 1930. File No. 34,946.